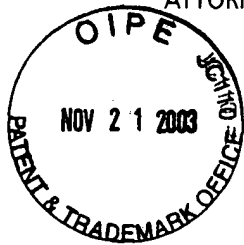


1652

Image

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Federal Agencies

November 21, 2003

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Group Art Unit 1652

Re: U.S. Utility Patent Application
Appl. No. 10/067,974; Filed: February 8, 2002
For: **Polynucleotide Constructs for Increased Lysine Production**
Inventors: *Li et al.*
Our Ref: 1533.2640001/MAC/M-G

Sir:

Transmitted herewith for appropriate action are the following documents:

1. Reply To Restriction Requirement; and
2. One (1) return post card.

It is respectfully requested that the attached postcard be stamped with the date of filing of these documents, and that it be returned to our courier. In the event that extensions of time are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

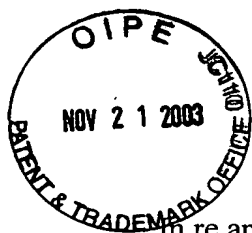
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Michele A. Cimbala

Michele A. Cimbala
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Enclosures

SKGF_DC1:202313.1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Li *et al.*

Appl. No. 10/067,974

Filed: February 8, 2002

For: **Polynucleotide Constructs for
Increased Lysine Production**

Confirmation No. 3799

Art Unit: 1652

Examiner: Kerr, K. M.

Atty. Docket: 1533.2640001/MAC/M-G

Reply To Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The following is in reply to the Office Action dated November 10, 2003, requesting an election of one invention to prosecute in the above-referenced patent application.

Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-23 and 25, drawn to polynucleotide molecules, related products, and related methods, classified in class 435, subclass 471. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. This election is made with traverse.

The criteria for a proper requirement for restriction are that (1) the inventions must be independent or distinct as claimed; *and* (2) there must be a serious burden on the Examiner if restriction is not required. MPEP § 803. (Emphasis added). The "serious burden" requirement of the second criterion must be shown by demonstrating at least one of the following: a) separate classification of the subject matter; b) that the subject matter has

attained separate status in the art when they are classifiable together; or c) different fields of search for the subject matter. *See* MPEP § 808.02.


Hence, the Examiner has not shown by appropriate explanation any of the three reasons supporting a serious burden if restriction were not required. The MPEP states that "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." MPEP § 803. Applicants respectfully assert that, because the claims of Groups I and II are closely related, and because a search of claims 1-23 and 25 (the claims of Group I) will encompass a search of the subject matter of claim 24 (the claim of Group II) as well, the Examiner must examine all of these claims on the merits. Because the Examiner has not satisfied both criteria for restriction, Applicants request reconsideration and withdrawal of the Restriction Requirement between Groups I and II.

Consideration and allowance of all pending claims, are respectfully requested. This species election is made with reservation to have additional species and/or the generic claim considered and allowed if the elected species is found allowable over the prior art.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Date: 11/21/03

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